

UNION COUNTY COURT
MUNICIPAL APPEAL No. 1911

STATE OF NEW JERSEY,

 Plaintiff,

v.

ALAN DAVIES,

 Defendant-Appellant.

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APPROVED FOR PUBLICATION
OPINION

JUN 10 1974

ADMINISTRATIVE OFFICE OF THE COURTS

Argued: May 16, 1974

Decided: May 16, 1974

On appeal from Municipal Court, Union, New Jersey,
Union County.

Mr. Michael C. Willner argued the cause for Defendant
Appellant.

Mr. Lawrence Posner, Assistant Prosecutor argued the
cause for the State.
(Mr. Karl Asch, Union County Prosecutor, Attorney)

DREIER, J.D.C. (Temporarily Assigned)

Defendant has appealed from a denial by the Municipal
Court of the Township of Union of his application pursuant to
N.J.S.A. 2A:85-15 to expunge the record of an arrest. Since
this Court is of the opinion that the Municipal Court Judge
misinterpreted the provisions of the statute, and it appears
that there has been no interpretation of the statute recorded
since its enactment, this opinion has been reduced to writing.

Defendant was arrested on November 13, 1973 for
violating N.J.S.A. 24:21-20a(3), possession of a controlled

the prosecutor and the Attorney General, who may object to the expungement of the record in question.

2A:85-17a provides:

"At the time appointed for the hearing, if there is no objection from those law enforcement agencies notified of the hearing, and no reason appears to the contrary, the court may grant an order directing the clerk of the court and the parties upon whom notice was served to expunge from their records all evidence of said arrest including evidence of detention related thereto, and specifying those records to be expunged." [Emphasis added]

2A:85-17b provides for the procedure for the physical removal, storage and control of the expunged records.

There then appears Sections 2A:85-18, 19 and 20, setting forth the further procedure in the event an objection is received from one of the law enforcement agencies. It is under these sections that the Municipal Court Judge found that he had no power to expunge the arrest record, since there were "grounds for denial" as defined in Section 2A:85-20, namely, when the dismissal of the charge resulted "after exclusion of highly probative evidence upon invocation of an exclusionary rule not directed to the truth of the evidence excluded". What the Court overlooked, however, was that the issue of "grounds for denial" never arises unless an objection is made

was reintroduced, but died in committee in 1970, 1971 and 1972. It finally became Chapter 191 of the laws of 1973 after being amended several times during the enactment process. Governor Cahill conditionally vetoed the bill on March 9, 1973, and his veto message dated March 9, 1973 included the new suggested texts of Sections 2A:85-17a through 22 inclusive, adding the procedure in the event an objection was made and the determination of "grounds for denial". The veto message said, in part:

" There may be situations where the police have no reason to retain an arrest record as when the arrest was an admitted mistake. In such a situation it may be appropriate to expunge the arrest record. However, if the police legitimately believe that the record is necessary for law enforcement purposes, expungement would be inappropriate."

* * *

"In some situations where an arrest does not result in a conviction, neither expungement nor sealing should be permitted. For example, if a plea bargaining agreement results in the dismissal of unrelated offenses involving separate arrests, those arrest records are, and will continue to be, extremely meaningful and useful to the police despite the dismissal of the offense. There is no justifiable reason why such information should not continue to be used as it is presently being used." [Emphasis added]

The separate genesis of the "grounds for denial" sections, and the separate purposes which they serve as set

Applying the standards of 2A:85-17a, and seeing no reason to remand the matter for a fresh determination of whether the arrest record should be expunged, this Court will exercise the descretion granted under this Section, and enter the expungement order.

2A:85-15. Petition to expunge or seal record of arrest after acquittal, discharge or dismissal

Any person who has been arrested for a violation of the disorderly persons law, a misdemeanor or a high misdemeanor under the laws of New Jersey and against whom proceedings were dismissed, or who was discharged without a conviction, or who was acquitted, may at any time following the dismissal of proceedings, or the discharge without a conviction, or the acquittal, present a duly verified petition to the court in which the judgment of acquittal, discharge or dismissal was entered, or, if there were no court proceedings, to the court in whose jurisdiction the arrest occurred, setting forth all the facts in the matter and praying for the relief provided by this act.

L.1973, c. 191, § 1, eff. June 28, 1973.

Title of Act:

An Act concerning expunging and sealing of records of arrest under certain circumstances. L.1973, c. 191.

Library References

Records, ~~C~~ 14, 22
C.J.S. Records §§ 35 et seq., 73, 75, 76.

2A:85-16. Hearing; time; service of order

Upon the filing of a petition pursuant to this act the court may by order fix a time, not less than 15 nor more than 45 days thereafter, for the hearing of the matter. A copy of this order shall be served pursuant to the Rules of Court upon the Attorney General, upon the prosecutor of the county wherein the court is located, upon the chief of police or other executive head of the police department of the municipality in which the arrest occurred, and upon the chief law enforcement officer of any other law enforcement agency of this State which participated in the arrest, within 5 days from the date of the order.

L.1973, c. 191, § 2, eff. June 28, 1973.

2A:85-17. Order to expunge records; grounds; failure to object by law enforcement agencies; disposition of records

a. At the time appointed for the hearing, if there is no objection from those law enforcement agencies notified of the hearing, and no reason appears to the contrary, the court may grant an order directing the clerk of the court and the parties upon whom notice was served to expunge from their records all evidence of said arrest including evidence of detention related thereto, and specifying those records to be expunged.

b. If an order expunging the records is granted by the court, all the records specified in the order shall be removed from the files and placed in the control of a person who shall be designated to retain control over all expunged records and who shall ensure that the records or the information contained therein is not released for any reason. In response to requests for information or records on the person who was arrested, the law enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record.

L.1973, c. 191, § 3, eff. June 28, 1973.

2A:85-18. Objection by law enforcement agency; sealing of records; order; grounds; disposition of records and requests for information

a. If an objection is made by any law enforcement agency upon which notice was served, the court shall determine whether there are grounds for denial. If the court determines there are no grounds for denial it may grant an order directing the clerk of the court and the parties upon whom notice was served to seal their records of said arrest, including evidence of detention related thereto, and specifying those records to be sealed.

b. If an order sealing the records of arrest is granted by the court, any law enforcement officers and departments who receive requests for information or records on the person against whom the arrest was entered shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record. Such sealed records and information may be maintained by any law enforcement agency originally

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2A:85-15. Petition to expunge or seal record of arrest after acquittal, discharge or dismissal

Any person who has been arrested for a violation of the disorderly persons law, a misdemeanor or a high misdemeanor under the laws of New Jersey and against whom proceedings were dismissed, or who was discharged without a conviction, or who was acquitted, may at any time following the dismissal of proceedings, or the discharge without a conviction, or the acquittal, present a duly verified petition to the court in which the judgment of acquittal, discharge or dismissal was entered, or, if there were no court proceedings, to the court in whose jurisdiction the arrest occurred, setting forth all the facts in the matter and praying for the relief provided by this act.

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2A:85-17. Order to expunge records; grounds; failure to object by law enforcement agencies; disposition of records

a. At the time appointed for the hearing, if there is no objection from those law enforcement agencies notified of the hearing, and no reason appears to the contrary, the court may grant an order directing the clerk of the court and the parties upon whom notice was served to expunge from their records all evidence of said arrest including evidence of detention related thereto, and specifying those records to be expunged.

b. If an order expunging the records is granted by the court, all the records specified in the order shall be removed from the files and placed in the control of a person who shall be designated to retain control over all expunged records and who shall ensure that the records or the information contained therein is not released for any reason. In response to requests for information or records on the person who was arrested, the law enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record.

L.1973, c. 191, § 3, eff. June 28, 1973.

2A:85-18. Objection by law enforcement agency; sealing of records; order; grounds; disposition of records and requests for information

a. If an objection is made by any law enforcement agency upon which notice was served, the court shall determine whether there are grounds for denial. If the court determines there are no grounds for denial it may grant an order directing the clerk of the court and the parties upon whom notice was served to seal their records of said arrest, including evidence of detention related thereto, and specifying those records to be sealed.

b. If an order sealing the records of arrest is granted by the court, any law enforcement officers and departments who receive requests for information or records on the person against whom the arrest was entered shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record. Such sealed records and information may be maintained by any law enforcement agency originally

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possessing such records and information, but such information shall be utilized only within the department and sufficient precautions shall be taken to insure that the sealed records and information are not revealed to anyone outside the law enforcement agency which continues to maintain the records or information.

Inspection of the files and records, or release of the information in the files and records, which are the subject of the sealing order, to anyone other than a person within the law enforcement agency in which the arrest records were sealed, may be permitted only by the court upon motion for good cause shown, and any such motion and any order granted pursuant to such motion shall specify the person or persons to whom the records and information are to be shown.

L.1973, c. 191, § 4, eff. June 28, 1973.

2A:85-19. Denial of order to expunge or seal records

If the court determines there are grounds for denial, the court shall not grant an order to expunge or seal the records of the arrest or evidence of detention related thereto.

L.1973, c. 191, § 5, eff. June 28, 1973.

2A:85-20. Grounds for denial

For the purpose of this act "grounds for denial" shall exist:

a. When the usefulness of the information of the arrest and the proceedings to law enforcement authorities and to anyone who might obtain such information outweighs the desirability of having a person, who has been acquitted or against whom charges have been dismissed or discharged, freed from any disabilities attached to the arrest which preceded that acquittal, dismissal or discharge.

b. When dismissal resulted from a plea bargaining agreement or when acquittal, discharge or dismissal occurred after exclusion of highly probative evidence upon invocation of an exclusionary rule not directed to the truth of the evidence excluded.

L.1973, c. 191, § 6, eff. June 28, 1973.

2A:85-21. Effect of order expunging or sealing record of arrest

If an order expunging or sealing a record of arrest is granted, the arrest and any proceedings related thereto shall be deemed not to have occurred and the petitioner may answer accordingly any question relating to their occurrence.

L.1973, c. 191, § 7, eff. June 28, 1973.

2A:85-22. Retroactive application; Inapplicability of act to reports under Controlled Dangerous Substances Registry Act

This act shall apply to arrests which occurred prior to and which occur after enactment of this act. No court order pursuant to this act shall prohibit the filing of reports required under the "Controlled Dangerous Substances Registry Act of 1970," c. 227 (C. 26:2G-17 et seq.).

L.1973, c. 191, § 8, eff. June 28, 1973.

2A:85-23. Fees

For services performed under this act the same fees shall be taxed as are usual for like services in other matters, which fees shall be payable by the petitioner.

L.1973, c. 191, § 9, eff. June 28, 1973.